IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL **APPELLATE SIDE**
SECOND APPEAL NO.346 OF 2002
WITH
CIVIL APPLICATION NO.450 OF 2002

Mrs. Sushilabai Pannalal Goyal
And Another ...Appellants.

V/s.

Sham-Gandhi Construction Company ...Respondents.

Adv.Shri A.V.Anturkar for the Appellants present.
Mr.Ramesh Karade i/b Suhasini Mutalik for the Respondents present.

CORAM: J.H.BHATIA, J.
DATE : 4th August, 2005.
P.C.:

1. Heard the learned counsels for both the parties.

2. The Appellant, who is a original Defendant, was a tenant. He surrendered the tenancy and agreed to purchase a shop from the Respondent/ Plaintiff for a consideration of Rs.81,000/- in the new building to be constructed after demolishing the old building. The Appellant had issued a cheque of Rs.81,000/- but he stopped the payment. The Respondent filed the suit for the recovery of the said amount with the interest. It was the contention of the Appellant that he purchased a shop having a area of 540 feet but the Respondent had failed to give possession of that much area. The record

reveals that the Appellant had actually taken possession of shop admeasuring about 460 square foot. Both the Courts below came to a conclusion that the Appellant had failed to prove that he was to get an area of 540 feet. As admittedly he had not made payment, the suit filed by the Plaintiff was decreed by the Trial Court with interest at the rate of 18% per annum. In Appeal filed by the Appellant, the Appellate Court reduced the future interest to 6% p.a.

3. In view of the above facts and the concurrent findings of the Trial Court about handing over of possession and the area of shop, I do not find any substantial question of law. The Appeal stands dismissed.

4. In view of the dismissal of the Second Appeal, the Civil Application does not survive and it also stands dismissed.

(J.H.BHATIA, J.)